

131713-1

REMARKS

Claims 1 – 46 are pending in the present Application. Claims 3, 4, 7, 13, 32 – 35, and 40 – 46 have been withdrawn, without prejudice, as directed to non-elected claims. Claim 2 has been cancelled, and Claims 12 and 20 have been amended, leaving Claims 1, 5, 6, 8 – 12, 14 – 31, and 36 – 39 for consideration upon entry of the present Amendment. The Specification has been amended to correct certain typographical errors.

Claim 12 has been amended to correct a typographical error. Support for this amendment can at least be found in Claim 12 as originally filed.

Claim 20 has been amended to clarify that the polycarbonate and poly alkylacrylate are present in the middle layer.

No new matter has been introduced by these amendments. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

Elections/Restrictions

Claims 9 and 10 have incorrectly been identified as withdrawn. Claims 9 and 10 were identified in the Restriction Requirement dated November 01, 2005, as generic. (Page 3). These claims were not withdrawn from prosecution.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 6, 20-21, 39 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 states: "The multi-layer laminate of claim 5 wherein the acrylonitrile-styrene-acrylate graft copolymer (ASA) further comprises a styrene acrylonitrile copolymer (SAN)." In other words, Claim 6 further describes *the* acrylonitrile-styrene-acrylate graft copolymer (ASA) set forth in Claim 5. This claim does not require (and is not limited to) a mixture or blend, it merely further defines the particular ASA of Claim 5.

Claim 20 has been amended thereby rendering this rejection moot.

131713-1

Regarding Claim 39, "Class 'A' Finish" is a term of art that is well understood by those of ordinary skill in the art. This term is further explained in the specification at Paragraph [0021]. The term "Class 'A' Finish" is clear and definite.

Reconsideration and withdrawal of this rejection are respectfully requested.

Obviousness Double Patenting

Claims 1-6, 8, 11-12, 14-16, 22-29, 36-39 have been rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-47 of copending Application No. 10/210,746 (US 2003/0175488); or Claims 1-39 of copending Application No. 10/894,952 (US 2006/0019099) in view of U.S. Patent No. 4,381,359 to Idcl et al. Claims 1-6, 8, 11-12, 14-16, 19, 22-27 have been rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-37 of copending U.S. Application No. 10/895,522 (US 2006/0017193) in view of Idcl et al.

Since neither the present claims nor the claims of any of the copending Applications (10/210,746, 10/894,952, or 10/895,522), have been patented, there is no way that double patenting can be determined (nothing is patented and there is no way to compare the final claims until one of the cases has been patented and the other claims are otherwise allowable). As a result, currently, there is no "double patenting" or even patenting. Hence, the Applicants respectfully request that the Examiner withdraw these obviousness double patenting rejections until the claims are in final form and otherwise in condition for allowance, and the case over which double patenting is alleged is allowed. Until such time, there is no double patenting and no way to determine double patenting.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-6, 8, 11-12, 14-31, 36-39 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. US 6,306,507 to Brunelle et al. (hereinafter Brunelle '507) or US 6,265,522 to Brunelle et al. (hereinafter Brunelle '522) (which is a divisional of Brunelle '507), in view of U.S. Patent No. 4,381,359 to Idcl et al. Brunelle '522 is a divisional of Brunelle '507, and therefore, by definition, comprises the same information. Hence, for convenience and clarity, only Brunelle '507 will be referred to below. Applicants respectfully

131713-1

traverse this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

The present claims are direct to formable thermoplastic multi-layer laminates and to articles comprising the laminate. The laminate comprises an outer layer comprising a polymer comprising resorcinol arylate polyester chain members, a middle layer comprising a thermoplastic polymer, an inner-tie layer comprising a thermoplastic polymer comprising a carbonate polymer and an acrylonitrile-styrene graft copolymer comprising at least one of an acrylonitrile-styrene-acrylate graft copolymer (ASA) or an acrylonitrile-butadiene-styrene graft copolymer (ABS). The middle layer is between the outer layer and the inner-tie layer and is in contact with both the outer layer and the inner-tie layer. (Claims 1 and 28)

Brunelle '507 is directed to thermally stable polymers. It discusses a polymer comprising resorcinol acrylate polyester chain members in detail, including the specific composition thereof. The focus of *Brunelle '507* is on the polymer, making the polymer, and articles comprising the polymer.

Idel et al. are directed to thermoplastic moulding compositions. *Idel et al.* are relied upon to teach that it is "known in the art to incorporate a combination of acrylonitrile-styrene-acrylate graft copolymer (ASA) and optionally an additional acrylonitrile-styrene copolymer in polycarbonate compositions in order to obtain improved mechanical properties...". Allegedly,

[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize known PC/ASA-based blend compositions in the laminates of the *Brunelle* references... It would have been obvious to use commercially available stabilizers (claims 11-12) in order to improve the durability and environmental resistance... One of ordinary skill in the art would have selected the melt flow properties of the inner layer (claim 14) in order to

131713-1

optimize.... It would have been obvious to incorporate additional intermediate layers (claim 18) in order to enhance adhesion...

(Office Action, Page 7) However, obviousness is not based upon what an artisan could do or what an artisan may try, but is based upon what an artisan would be motivated to do with an expectation of success. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, No. 04-1616 (CAFC March 22, 2006) citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); and *In re Rouffett*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998). When the Examiner does not explain the motivation, or the suggestion or teaching, that would have led the skilled artisan at the time of the invention to the claimed combination as a whole, the use of hindsight to conclude that the invention was obvious is inferred. *Id.* Additionally, "[a]lthough the suggestion to combine references may flow from the nature of the problem, '[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.'" (internal citation omitted) *Id.*, (quoting *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 881 (Fed. Cir. 1998)); *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992).

Idel et al. are directed to moulding compositions, and focus on the stabilization of mixtures of aromatic polycarbonates and ABS plastics. (Col. 1, lines 5 – 10) They focus on the particular components of the composition. They mention that the moulding compositions can be used in injection moulded bodies. (Col. 7, lines 6 – 8) The present application addresses adhesion, surface quality, and appearance. (Paragraphs [0166-0167] Brunelle '507 discusses multilayered articles. There is no motivation or expectation that moulding compositions of Idel et al. will attain a good adhesion in a multilayer laminate. There is no expectation that "utilizat[ion] of the PC/ASA-based blend compositions in the laminates of the BRUNELLE references ...[would] obtain durable, attractive laminates...." (Office Action, page 7). This is merely a conclusory statement based upon the teachings of the present application; i.e., with the hindsight of the present application. No motivation or expectation of success at the time of the present invention has been provided based upon the teachings of the references.

It is also noted that no motivation is provided for any of the other allegedly obvious claims. For example, no motivation exists to choose a thermoplastic polymer comprising the

131713-1

claimed melt flow properties. A conclusory statement, e.g., "in order to optimize compatibility in melt processing and multilayer film forming operations" (Office Action, page 7), is merely an unsupported statement that is evidence of hindsight, not motivation. Motivation and expectation of success must be provided by the prior art, not the present application. There is no motivation to employ the particularly claimed stabilizers, the particularly claimed melt flow properties, the particular foam-forming materials, etc. Changes in materials can adversely affect adhesion, surface quality, and so forth. There is no motivation to merely use any material. There is no expectation of success that the result of the use of any material will improve the properties of the layer or laminate, or that the material will allow the formation of a viable multilayer laminate. No *prima facie* case of obviousness has been established.

Regarding Claims 22 and 24 – 27, the product has not been described in the prior art. No *prima facie* case of obviousness has been established for at least the reasons described above.

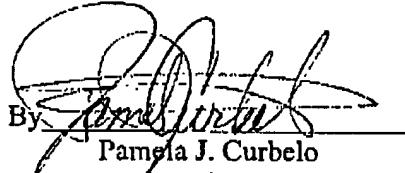
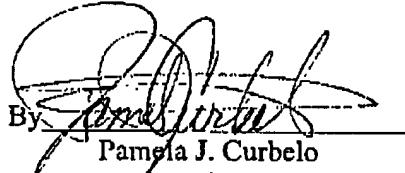
Reconsideration and withdrawal of this rejection are respectfully requested.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejections and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 50-3621.

Respectfully submitted,

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